



CONNECTICUT  
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**Raised Bill No. 460**

**Public Hearing: 3-21-16**

**TO: MEMBERS OF THE JUDICIARY COMMITTEE**  
**FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)**  
**DATE: March 21, 2016**  
**RE: TESTIMONY ON AN ACT CONCERNING COMPENSATION FOR  
WRONGFUL INCARCERATION**

CTLA submits this testimony in consideration of An Act Concerning Compensation For Wrongful Incarceration. In addition to the below commentary, CTLA suggests that, if there is a perceived need for revisions to § 54-102uu, that such revisions would benefit from study conducted by representatives from various stakeholder groups, similar to the composition that makes up the Wrongful Conviction Advisory Committee.

Since 2008, C.G.S. § 54-102uu has provided a mechanism for compensation for innocent individuals whose lives were drastically altered by the circumstances of their wrongful conviction. Along with enacting C.G.S. § 54-102uu, the Assembly also passed Special Act 07-5, which awarded James Tillman \$5 million dollars after spending 18 ½ years in prison for a crime he did not commit. Beginning in 2015, the Claims Commission has made decisions using the guidelines provided under C.G.S. § 54-102uu.



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In many of these cases, the Attorney General's Office, based on the facts and circumstances of each case, readily agreed that innocence was established and the individual was entitled to compensation pursuant to §54-102uu. A review of §54-102uu decisions to date show that compensation was awarded in a similar range to the legislature's award in Tillman. In cases where the range of recovery sought or identified by the claimants in their damage analysis was within a similar amount (to the Tillman award), the Attorney General's Office also offered no objections during the Claims Commission process.

Raised Bill No. 460 seeks to amend §54-102uu in several ways: establishing a new process for entitlement to an award, specifically limiting any award to a range determined by length of time incarcerated and median incomes in Connecticut; and a denial of the right to pursue additional remedies. The changes proposed will significantly reduce compensation available to a vulnerable and deserving population, deprive these individuals of their civil rights, and undermine the ability of civil rights litigation to expose and punish wrongdoers.

Raised Bill No. 460 specifically limits compensation to a formula based upon median incomes and the amount of time the individual was incarcerated. Innocent persons who have been wrongfully convicted are harmed in many ways including wrongful accusation, prosecution, conviction, and imprisonment. Despite exoneration



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and release from prison, a wrongful convictions remain a lifetime sentence. Depression, anxiety, PTSD, flashbacks, sleeplessness, constant vigilance, permanently damaged relationships with family, permanent damage to one's ability to earn, are just a few of the ways in which the wrongfully convicted are permanently disabled. A wrongful conviction is a permanent life altering event. The proposed compensation scheme under Raised Bill No. 460 does not sufficiently address the harm rendered by the State.

Raised Bill No. 460 would reverse §54-102uu in its protection of an individual's civil rights. Currently, §54-102uu(g) explicitly states, "Nothing in this section shall be construed to prevent such person from pursuing any other action or remedy at law or in equity that such person may have against the state and any political subdivision of the state and any officer, agent, employee or official thereof arising out of such wrongful conviction and incarceration." In contemplating any change, recognition of several factors is important.

First, Raised Bill No. 460, as well as §54-102uu, do not provide the compensation to an individual to the same breadth and degree would a civil rights claim in under what are known as "1983 claims." Damage to an individual from a wrongful conviction is wide and far reaching. To force individuals who have been incarcerated for substantial periods of time to then make a choice between a lesser amount of compensation and



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waiver of their civil rights, or the risk and uncertainty of civil litigation is not in keeping with the ideals behind §54-102uu, and may in fact be unconstitutional.

Second, 1983 claims are very difficult to pursue and prevail. The wrongly convicted individual must demonstrate that his conviction was the result of official misconduct that directly led to a constitutional violation, that the misconduct fit into a narrow category of established constitutional standards and that the standards existed at the time that the crime was committed. In addition, many individuals involved in the arrest and prosecution, are either partially or absolutely immune for their actions, meaning claims may not be brought, or are subject to dismissal.

Third, 1983 litigation can be expensive, time consuming and uncertain. Litigation can take years and even in the case of successful claims, recovery of actual damages are not guaranteed.

Fourth, the law already bars a "double recovery," that is, an individual recovering for the same damages twice. Under Conn.Gen.Stat. §4-160b(b), the Claims Commission may reduce an award where a claimant has received payment from another source. ("Any payment of a claim made by the Claims Commissioner shall be reduced by the amount received by the claimant from any other source for such claim."). Thus, any prior recovery would be deducted from an award under §54-102uu. Similarly, any "double recovery" would be a consideration during the resolution of a 1983 case when litigated in



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a civil case. Should the legislature see fit, §54-102uu could be amended to codify this principle.

Finally, 1983 litigation provides another important role in society, it provides a mechanism to expose and punish wrongdoers whose unlawful actions have substantially caused the wrongful conviction. The suggested amendment will effectively grant blanket immunity to all individuals involved in the arrest and prosecution, regardless of the egregiousness of their conduct.

CTLA urges the Committee to consider carefully any amendments to §54-102uu that diminish the award of compensation and impede the civil rights of the wrongfully convicted.